

2007 DRAFTING REQUEST

Bill

Received: **11/29/2006**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Marlin Schneider (608) 266-0215**

By/Representing: **seth**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Property - exemption**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Schneider@legis.wisconsin.gov**

Carbon copy (CC:) to: **joseph.kreye@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Definition of "waste treatment facility" for property tax exemption purposes

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	jkreye 11/30/2006	jdye 12/21/2006	sherritz 12/21/2006	_____	mbarman 12/21/2006		S&L
/1	jkreye 12/22/2006	jdye 12/22/2006	pgreensl 12/22/2006	_____	cduerst 12/22/2006	cduerst 01/09/2007	S&L

FE Sent For:

*at intro
3/2*

<END>

*requested via
phone pen
Rep. Schneider*

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/P1	jkreye 11/30/2006	jdye 12/21/2006	sherritz 12/21/2006	<i>12/22</i> <i>12/22</i>	mbarman 12/21/2006		S&L

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12/22 jld
8/22 pb
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/P1	jkreye	PI 12/21 jld sh 12/21		sh/pg 12/21			

FE Sent For:

<END>

Schneider, Marlin

From: Boffeli, Seth
Sent: Tuesday, November 14, 2006 10:23 AM
To: *Legislative Assembly Democrats
Subject: MJS Editorial: Close this loophole

Attachments: Shockwave Flash Object

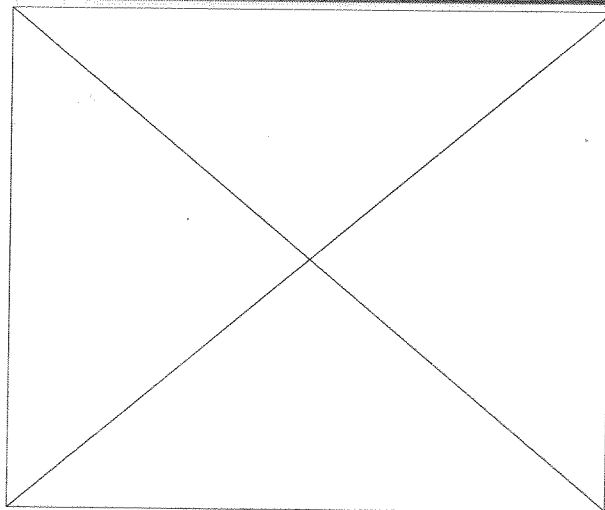
Editorial: Close this loophole

From the Journal Sentinel

Posted: Nov. 13, 2006

We're all for lower taxes, but a loophole in the law discovered by some Wisconsin companies should be closed.

Advertisement



As a result of the loophole, billions of dollars of industrial property could come off the tax rolls in the coming years, the Journal Sentinel's Avrum D. Lank reported recently, placing an unfair burden on average homeowners.

The tax breaks stem from a 1953 law that provided a tax exemption for "all property purchased or constructed as a waste treatment facility." For years, the law was interpreted to mean that wastewater treatment facilities didn't have to pay taxes.

But in 1999, Wisconsin Paperboard Corp., a recycler of cardboard based in Milwaukee, challenged the tax status of its land and buildings. The argument: Because Wisconsin Paperboard's operations reduce pollution in the air and water, the plant should be exempt under the 1953 law.

Last year, a circuit court in Dane County agreed, and the state Department of Revenue declined to appeal.

Since then, other companies, mainly papermakers, have rushed to apply for the exemption, including SCA Tissue North America, which has operations in Menasha, and Green Bay operations of Georgia-Pacific Corp. Georgia-Pacific wants to take more than \$110 million off the Green Bay rolls.

The result of these actions would be a massive shift of the property tax burden to individual homeowners. That's unfair. Menasha Mayor Joe Laux told Lank that property taxes on a \$100,000 home in his city could go up \$30 to \$40 a year if the land and equipment owned by SCA is declared tax exempt.

Lower property taxes would be a good thing for everyone in Wisconsin, as we've long argued. In this case, communities and business groups are talking and may reach an agreement that everyone can live with. But if they don't, the Legislature should take steps during the next session to close this loophole.

From the Nov. 14, 2006 editions of the Milwaukee Journal Sentinel
Have an opinion on this story? Write a letter to the editor or start an online forum.

Subscribe today and receive 4 weeks free! Sign up now



State of Wisconsin
2007 - 2008 LEGISLATURE

12/27

LRB-0944/P1

JK: ^:...

JLD

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

11-30-06

D-N

AB For purposes of administering the
waste treatment facilities, this
property tax exemption for

- 1 AN ACT ...; **relating to:** the definition of waste treatment facility for property tax
2 exemption purposes. ✓

Gen

Analysis by the Legislative Reference Bureau

Under current law, generally, all property purchased or constructed as a waste treatment facility and used to treat industrial wastes or air contaminants is exempt from property taxes. Under administrative rules promulgated by the Department of Revenue, "waste treatment facility" means tangible property that is built, constructed, or installed as a unit so as to be readily identifiable as directly removing, altering, or storing leftover, superfluous, discarded, or fugitive material. This bill creates a definition for "waste treatment facility" that is the same as the definition under administrative rules.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 3 **SECTION 1.** 70.11 (21) (a) of the statutes is renumbered 70.11 (21) (am).
4 **SECTION 2.** 70.11 (21) (ab) of the statutes is created to read:
5 70.11 (21) (ab) In this subsection, "waste treatment facility" means tangible
6 property that is built, constructed, or installed as a unit so as to be readily

1 identifiable as directly removing, altering, or storing leftover, superfluous,
2 discarded, or fugitive material. ✓

3 **SECTION 3.** 74.35 (2m) ✗ of the statutes is amended to read:

4 74.35 (2m) EXCLUSIVE PROCEDURE. A claim that property is exempt, other than
5 a claim that property is exempt under s. 70.11 (21) (a) ✓ or (27), may be made only in
6 an action under this section. Such a claim may not be made by means of an action
7 under s. 74.33 or an action for a declaratory judgment under s. 806.04.

8 History: 1987 a. 378; 1989 a. 104; 1991 a. 39; 1997 a. 237. ✗

8 **SECTION 4.** 74.35 (5) (d) of the statutes is amended to read:

9 74.35 (5) (d) No claim may be made under this section based on the contention
10 that the tax was unlawful because the property is exempt from taxation under s.
11 70.11 (21) ✓ (a) or (27).

12 History: 1987 a. 378; 1989 a. 104; 1991 a. 39; 1997 a. 237. ✗

12 **SECTION 5.** 76.025 (1) of the statutes is amended to read:

13 76.025 (1) The property taxable under s. 76.13 shall include all franchises, and
14 all real and personal property of the company used or employed in the operation of
15 its business, excluding property that is exempt from the property tax under s. 70.11
16 (39) and (39m), such motor vehicles as are exempt under s. 70.112 (5) and treatment
17 plant and pollution abatement equipment exempt under s. 70.11 (21) ✓ (a). The
18 taxable property shall include all title and interest of the company referred to in such
19 property as owner, lessee or otherwise, and in case any portion of the property is
20 jointly used by 2 or more companies, the unit assessment shall include and cover a
21 proportionate share of that portion of the property jointly used so that the
22 assessments of the property of all companies having any rights, title or interest of

1 any kind or nature whatsoever in any such property jointly used shall, in the
2 aggregate, include only one total full value of such property.

History: 1997 a. 35 ss. 267 to 269, 271, 272; 1999 ~~39~~; 2001 a. 16.

3 **SECTION 6.** 76.81 of the statutes is amended to read:

4 **76.81 Imposition.** There is imposed a tax on the real property of, and the
5 tangible personal property of, every telephone company, excluding property that is
6 exempt from the property tax under s. 70.11 (39) and (39m), motor vehicles that are
7 exempt under s. 70.112 (5), property that is used less than 50% in the operation of
8 a telephone company, as provided under s. 70.112 (4) (b), and treatment plant and
9 pollution abatement equipment that is exempt under s. 70.11 (21) [✓](a). Except as
10 provided in s. 76.815, the rate for the tax imposed on each description of real property
11 and on each item of tangible personal property is the net rate for the prior year for
12 the tax under ch. 70 in the taxing jurisdictions where the description or item is
13 located. The real and tangible personal property of a telephone company shall be
14 assessed as provided under s. 70.112 (4) (b).

History: 1995 a. 351; 1997 a. 237; 2001 a. 16.

15 **SECTION 7.** 77.54 (26) [✗]of the statutes is amended to read:

16 **77.54 (26)** The gross receipts from the sales of and the storage, use, or other
17 consumption of tangible personal property which becomes a component part of an
18 industrial waste treatment facility that is exempt under s. 70.11 (21) (a) or that
19 would be exempt under s. 70.11 (21) (a) [✓]if the property were taxable under ch. 70, or
20 tangible personal property which becomes a component part of a waste treatment
21 facility of this state or any agency thereof, or any political subdivision of the state or
22 agency thereof as provided in s. 40.02 (28). The exemption includes replacement
23 parts therefor, and also applies to chemicals and supplies used or consumed in
24 operating a waste treatment facility and to purchases of tangible personal property

1 made by construction contractors who transfer such property to their customers in
2 fulfillment of a real property construction activity. This exemption does not apply
3 to tangible personal property installed in fulfillment of a written construction
4 contract entered into, or a formal written bid made, prior to July 31, 1975.

History: 1971 c. 64, 154, 215, 311; 1973 c. 90, 156, 240; 1975 c. 39, 96, 102, 146, 200; 1977 c. 29; 1977 c. 83 ss. 13, 26; 1977 c. 250, 368, 418; 1979 c. 1, 34, 87, 174; 1981 c. 20; 1981 c. 79 s. 18; 1981 c. 96 s. 67; 1981 c. 264; 1981 c. 282 s. 47; 1981 c. 317; 1983 a. 27 ss. 1284d to 1284np, 2202 (38); 1983 a. 189 ss. 101, 106, 329 (5), (12), (13); 1983 a. 192, 287, 405, 426, 498, 510, 538, 544; 1985 a. 29, 149, 332; 1987 a. 27; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31, 238, 270, 335, 359; 1991 a. 37, 39, 269, 316; 1993 a. 16, 263, 332; 1995 a. 27, 125, 225, 227; 1997 a. 27, 35, 41, 184, 237, 291; 1999 a. 9, 65, 83; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 16, 103, 109; 2003 a. 99, 128; 2005 a. 25, 74, 141, 149, 335, 366, 479; s. 13.93 (2) (c).

5 **SECTION 8. 79.04 (1) (a)** of the statutes is amended to read:

6 **79.04 (1) (a)** An amount from the shared revenue account or, for the
7 distribution in 2003, from the appropriation under s. 20.835 (1) (t), 2003 stats.,
8 determined by multiplying by 3 mills in the case of a town, and 6 mills in the case
9 of a city or village, the first \$125,000,000 of the amount shown in the account, plus
10 leased property, of each public utility except qualified wholesale electric companies,
11 as defined in s. 76.28 (1) (gm), on December 31 of the preceding year for "production
12 plant, exclusive of land," "general structures," and "substations," in the case of light,
13 heat and power companies, electric cooperatives or municipal electric companies, for
14 all property within a municipality in accordance with the system of accounts
15 established by the public service commission or rural electrification administration,
16 less depreciation thereon as determined by the department of revenue and less the
17 value of treatment plant and pollution abatement equipment, as defined under s.
18 70.11 (21) (a), as determined by the department of revenue plus an amount from the
19 shared revenue account or, for the distribution in 2003, from the appropriation under
20 s. 20.835 (1) (t), 2003 stats., determined by multiplying by 3 mills in the case of a
21 town, and 6 mills in the case of a city or village, of the first \$125,000,000 of the total
22 original cost of production plant, general structures, and substations less
23 depreciation, land and approved waste treatment facilities of each qualified

1 wholesale electric company, as defined in s. 76.28 (1) (gm), as reported to the
2 department of revenue of all property within the municipality. The total of amounts,
3 as depreciated, from the accounts of all public utilities for the same production plant
4 is also limited to not more than \$125,000,000. The amount distributable to a
5 municipality under this subsection and sub. (6) in any year shall not exceed \$300
6 times the population of the municipality.

History: 1971 c. 125, 215; 1973 c. 90 ss. 387, 391g; 1973 c. 243 s. 82; 1975 c. 39, 224; 1977 c. 29, 418; 1979 c. 34; 1983 a. 27; 1985 a. 29, 39; 1987 a. 27; 1989 a. 31; 1993 a. 16, 307; 1995 a. 27; 1999 a. 150 s. 672; 2001 a. 16; 2001 a. 30 s. 48; 2003 a. 31, 33, 89, 320; 2005 a. 253, 254.

7 **SECTION 9. 79.04 (2) (a)** of the statutes is amended to read:

8 79.04 (2) (a) Annually, except for production plants that begin operation after
9 December 31, 2003, or begin operation as a repowered production plant after
10 December 31, 2003, the department of administration, upon certification by the
11 department of revenue, shall distribute from the shared revenue account or, for the
12 distribution in 2003, from the appropriation under s. 20.835 (1) (t), 2003 stats., to any
13 county having within its boundaries a production plant, general structure, or
14 substation, used by a light, heat or power company assessed under s. 76.28 (2) or
15 76.29 (2), except property described in s. 66.0813 unless the production plant or
16 substation is owned or operated by a local governmental unit that is located outside
17 of the municipality in which the production plant or substation is located, or by an
18 electric cooperative assessed under ss. 76.07 and 76.48, respectively, or by a
19 municipal electric company under s. 66.0825 an amount determined by multiplying
20 by 6 mills in the case of property in a town and by 3 mills in the case of property in
21 a city or village the first \$125,000,000 of the amount shown in the account, plus
22 leased property, of each public utility except qualified wholesale electric companies,
23 as defined in s. 76.28 (1) (gm), on December 31 of the preceding year for "production
24 plant, exclusive of land," "general structures," and "substations," in the case of light,

1 heat and power companies, electric cooperatives or municipal electric companies, for
2 all property within the municipality in accordance with the system of accounts
3 established by the public service commission or rural electrification administration,
4 less depreciation thereon as determined by the department of revenue and less the
5 value of treatment plant and pollution abatement equipment, as defined under s.
6 70.11 (21) (a),[✓] as determined by the department of revenue plus an amount from the
7 shared revenue account or, for the distribution in 2003, from the appropriation under
8 s. 20.835 (1) (t), 2003 stats., determined by multiplying by 6 mills in the case of
9 property in a town, and 3 mills in the case of property in a city or village, of the total
10 original cost of production plant, general structures, and substations less
11 depreciation, land and approved waste treatment facilities of each qualified
12 wholesale electric company, as defined in s. 76.28 (1) (gm), as reported to the
13 department of revenue of all property within the municipality. The total of amounts,
14 as depreciated, from the accounts of all public utilities for the same production plant
15 is also limited to not more than \$125,000,000. The amount distributable to a county
16 under this subsection and sub. (6) in any year shall not exceed \$100 times the
17 population of the county.

History: 1971 c. 125, 215; 1973 c. 90 ss. 387, 391g; 1973 c. 243 s. 82; 1975 c. 39, 224; 1977 c. 29, 418; 1979 c. 34; 1983 a. 27; 1985 a. 29, 39; 1987 a. 27; 1989 a. 31; 1993 a. 16, 307; 1995 a. 27; 1999 a. 150 s. 672; 2001 a. 16; 2001 a. 30 s. 108; 2003 a. 31, 33, 89, 320; 2005 a. 253, 254.

18 **SECTION 10. Initial applicability.**

19 (1) This act first applies to property tax assessments as of January 1, 2007.[✓]

20 (END)

d-note
↓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0944/P1dn

JK:.....

date

↑
jld

Representative Schneider:

Please review this draft carefully to ensure that it is consistent with your intent. If my understanding of the decision in the "Paperboard, Inc." case is correct, I believe that creating a definition for "waste treatment facility" that matches the definition under DOR's administrative rules addresses the problem. However, you may want DOR to review this draft prior to introduction. Please contact me if you have any questions.

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

DRAFTER'S NOTE
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LRB-0944/P1dn
JK:jld:sh

December 21, 2006

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Barman, Mike

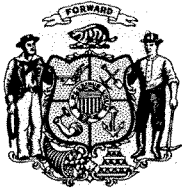
From: Barman, Mike
Sent: Friday, December 22, 2006 8:58 AM
To: Kreye, Joseph
Subject: FW: Draft review: LRB 07-0944/P1 Topic: Definition of "waste treatment facility" for property tax exemption purposes

From: Schneider, Marlin
Sent: Friday, December 22, 2006 8:52 AM
To: Barman, Mike
Subject: RE: Draft review: LRB 07-0944/P1 Topic: Definition of "waste treatment facility" for property tax exemption purposes

This looks fine to me. - Marlin

From: Barman, Mike
Sent: Thursday, December 21, 2006 2:30 PM
To: Rep.Schneider
Subject: Draft review: LRB 07-0944/P1 Topic: Definition of "waste treatment facility" for property tax exemption purposes

Following is the PDF version of draft LRB 07-0944/P1 and drafter's note.



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0944/P1

JK:jld:sh

RMR

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

in 12-22-06

Today, please

Reger

- 1 AN ACT *to renumber* 70.11 (21) (a); *to amend* 74.35 (2m), 74.35 (5) (d), 76.025
2 (1), 76.81, 77.54 (26), 79.04 (1) (a) and 79.04 (2) (a); and *to create* 70.11 (21) (ab)
3 of the statutes; **relating to:** the definition of waste treatment facility for
4 property tax exemption purposes.

Analysis by the Legislative Reference Bureau

Under current law, generally, all property purchased or constructed as a waste treatment facility and used to treat industrial wastes or air contaminants is exempt from property taxes. Under administrative rules promulgated by the Department of Revenue (DOR), "waste treatment facility" means tangible property that is built, constructed, or installed as a unit so as to be readily identifiable as directly removing, altering, or storing leftover, superfluous, discarded, or fugitive material. For purposes of administering the property tax exemption for waste treatment facilities, this bill creates a definition in the statutes for "waste treatment facility" that is the same as the definition under DOR's administrative rules.

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25 made by construction contractors who transfer such property to their customers in

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15 less depreciation thereon as determined by the department of revenue and less the
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17 70.11 (21) (a), as determined by the department of revenue plus an amount from the
18 shared revenue account or, for the distribution in 2003, from the appropriation under
19 s. 20.835 (1) (t), 2003 stats., determined by multiplying by 3 mills in the case of a
20 town, and 6 mills in the case of a city or village, of the first \$125,000,000 of the total
21 original cost of production plant, general structures, and substations less
22 depreciation, land and approved waste treatment facilities of each qualified
23 wholesale electric company, as defined in s. 76.28 (1) (gm), as reported to the
24 department of revenue of all property within the municipality. The total of amounts,
25 as depreciated, from the accounts of all public utilities for the same production plant

1 is also limited to not more than \$125,000,000. The amount distributable to a
2 municipality under this subsection and sub. (6) in any year shall not exceed \$300
3 times the population of the municipality.

4 **SECTION 9.** 79.04 (2) (a) of the statutes is amended to read:

5 79.04 (2) (a) Annually, except for production plants that begin operation after
6 December 31, 2003, or begin operation as a repowered production plant after
7 December 31, 2003, the department of administration, upon certification by the
8 department of revenue, shall distribute from the shared revenue account or, for the
9 distribution in 2003, from the appropriation under s. 20.835 (1) (t), 2003 stats., to any
10 county having within its boundaries a production plant, general structure, or
11 substation, used by a light, heat or power company assessed under s. 76.28 (2) or
12 76.29 (2), except property described in s. 66.0813 unless the production plant or
13 substation is owned or operated by a local governmental unit that is located outside
14 of the municipality in which the production plant or substation is located, or by an
15 electric cooperative assessed under ss. 76.07 and 76.48, respectively, or by a
16 municipal electric company under s. 66.0825 an amount determined by multiplying
17 by 6 mills in the case of property in a town and by 3 mills in the case of property in
18 a city or village the first \$125,000,000 of the amount shown in the account, plus
19 leased property, of each public utility except qualified wholesale electric companies,
20 as defined in s. 76.28 (1) (gm), on December 31 of the preceding year for "production
21 plant, exclusive of land," "general structures," and "substations," in the case of light,
22 heat and power companies, electric cooperatives or municipal electric companies, for
23 all property within the municipality in accordance with the system of accounts
24 established by the public service commission or rural electrification administration,
25 less depreciation thereon as determined by the department of revenue and less the

1 value of treatment plant and pollution abatement equipment, as defined under s.
2 70.11 (21) (a), as determined by the department of revenue plus an amount from the
3 shared revenue account or, for the distribution in 2003, from the appropriation under
4 s. 20.835 (1) (t), 2003 stats., determined by multiplying by 6 mills in the case of
5 property in a town, and 3 mills in the case of property in a city or village, of the total
6 original cost of production plant, general structures, and substations less
7 depreciation, land and approved waste treatment facilities of each qualified
8 wholesale electric company, as defined in s. 76.28 (1) (gm), as reported to the
9 department of revenue of all property within the municipality. The total of amounts,
10 as depreciated, from the accounts of all public utilities for the same production plant
11 is also limited to not more than \$125,000,000. The amount distributable to a county
12 under this subsection and sub. (6) in any year shall not exceed \$100 times the
13 population of the county.

14 **SECTION 10. Initial applicability.**

15 (1) This act first applies to property tax assessments as of January 1, 2007.

16 (END)